

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 3 OF 2019.

The Lokmat Media Pvt. Ltd
Thr. Its Auth. Signatory Viju Pillai., ... Appellant.

Versus

Rano Prabhu Dessai and anr., ... Respondents.

Mr. Rohit Bras De Sa, Advocate for the appellant.
Mr. Pavithran A. V., Advocate for the respondent no.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 24th July 2019.

ORAL ORDER

The learned Judicial Magistrate First Class, “B” Court Panaji dismissed the complaint under Section 138 of the Negotiable Instruments Act due to absence of the complainant as the complainant did not comply with the order of the Court granting exemption from appearance of the complainant subject to cost of Rs.500/- on 14.3.2018.

2. Heard learned Counsel for the appellant/complainant and the learned Counsel for the respondent.

3. It is needless to go into the factual matrix, suffice it to say that the appellant had filed a complainant under Section 138 of the Negotiable Instruments Act bearing No.OA No.555/2016/B against the respondent for dishonour of the cheque in the sum of Rs.1,74,040/-. It is contended by Mr. R. Desa, learned Counsel for the appellant that due to some unavoidable circumstances, the complainant could not remain present in the trial Court and merely because of his absence and non-payment of cost, complaint ought not to have been dismissed, when matter could have been decided on merits. According to the learned Counsel the impugned order resulting into the acquittal of the accused has resulted into miscarriage of justice and is in violation of principles of natural justice.

4. On the other hand Mr. Pavithran A. V., learned Counsel for the respondent strongly objected the contention of the appellant by stating that there was deliberate attempt on the part of the appellant to disobey the order of the trial Court by failing to deposit the cost. The trial Court has, therefore, justified in dismissing the complaint.

5. A certified copy of the roznama is tendered on record. It appears that on 30.7.2017 the complainant was absent however, he was represented by his Advocate and exemption from appearance of the complainant was sought. Thereafter on 6.3.2017, complainant again remained absent however his counsel was present. The accused was also absent on that date. Thereafter, on subsequent two dates complainant was absent however, his counsel was present. On 28.6.2017, 21.8.2017, 25.9.2017 and 31.1.2017 the complainant was consistently found absent and was represented through his advocate.

6. On 12.1.2018, the complainant was present. On that day certain documents came to be exhibited such as legal notice, cheque, bank return memo and reply to the legal notice etc. On 14.2.2018, the complainant was absent however, he was represented by his advocate as usual. On 14.3.2018, the complainant again remained absent. His Advocate moved an application seeking exemption which was objected by the accused and, therefore, the learned Magistrate thought it fit to grant the same subject to cost of Rs.500/- to be paid to the accused. It was adjourned

till 18.4.2018. Ultimately on 18.4.2018, since the complainant again remained absent without complying with the order passed on 14.3.2018, the learned Magistrate dismissed the complainant for non prosecution.

7. The conduct of the complainant/Appellant is writ large. It needs no further explanation. Nevertheless, as has been held in catena of decisions that procedure is the handmaid of justice. Parties should be permitted to adjudicate their disputes on merits in order to do substantial justice. The accused, though has been acquitted due to the dismissal of the complaint, it would be a meritless acquittal and, therefore, in order to meet the ends of justice, the impugned order needs to be quashed and set aside. Looking to the conduct of the complainant, he will have to be saddled with a cost of Rs.5000/- to be paid to the respondent no.1. The complainant will have to pay cost of Rs.500/- awarded by the learned JMFC to the respondent no.1 as a condition precedent for restoration of his complaint.

8. The impugned order dated 18.4.2018 is quashed and set aside, however it is subject to the condition that the complainant/appellant shall

pay/deposit Rs.5500/- as cost to the respondents no.1 within a week from today which shall be inclusive of cost imposed by the learned JMFC.

9. After depositing/paying the cost to the respondents, the complaint shall be restored to its original file.

10. The learned JMFC, shall proceed further to dispose of the complaint as per law.

11. The respondent who came to be acquitted pursuant to the dismissal of the complaint shall furnish fresh personal bond with the same sureties in the trial Court.

12. Appeal stands disposed of in aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

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